

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS ALBERTO FERRER,

Plaintiff,

-against-

MAYRICH CONSTRUCTION CORP. a/k/a SBG
CONSTRUCTION CORP., MAYRICH EQUIPMENT
CORP., MAYRICH FOUNDATION COMPANY, LLC,
and JOSEPH T. SCOTT,

Defendants.
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ANSWER TO SECOND
AMENDED COMPLAINT

Cv. 07-7999 (JGK)

Defendants, Mayrich Construction Corp. a/k/a SBG Construction Corp., Mayrich Equipment Corp., Mayrich Foundation Company, LLC, and Joseph T. Scott, by their attorneys, **FRANKLIN, GRINGER & COHEN, P.C.**, as and for its answer to the Second Amended Complaint, allege as follows:

1. The first paragraph of the Complaint sets forth that Plaintiff's action is based on claims pursuant to the Fair Labor Standards Act, 42 U.S.C. § 1981, the New York Labor Law, and the New York Executive Law and, as such, Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

2. The second paragraph of the Complaint sets forth jurisdictional invocations that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

3. The third paragraph of the Complaint sets forth jurisdictional invocations that Defendants are not obligated to answer; to the extent it may be read as setting forth any

allegations of fact, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

4. The fourth paragraph of the Complaint sets forth jurisdictional invocations that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

5. The fifth paragraph of the Complaint sets forth venue invocations that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of those allegations.

8. (*sic*). As to the first paragraph 8 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 5 of the Complaint as if fully set forth herein.

6. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. (second paragraph 8) Defendants admit the allegations contained in second paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Complaint except admit that Defendant Mayrich Construction, LLC is a registered New York limited liability company, with its principal place of business in the State of New York.

10. Defendants deny the allegations contained in paragraph 10 of the Complaint.

11. As to paragraph 11 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 10 of the Complaint as if fully set forth herein.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint except admit that Plaintiff was an employee of Mayrich Construction Corp.

13. Defendants admit the allegations contained in paragraph 13 of the Complaint.

14. Defendants admit the allegations contained in paragraph 14 of the Complaint.

15. Defendants admit the allegations contained in paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in paragraph 16 of the Complaint.

17. Defendants admit the allegations contained in paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint.

27. Defendants admit the allegations set forth in paragraph 27 of the Complaint except refer to the contents of the grievances referenced in paragraph 27 as to the contents of such

purported grievances.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

29. As to paragraph 29 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 28 of the Complaint as if fully set forth herein.

30. Defendants admit the allegations contained in paragraph 30 of the Complaint.

31. Defendants admit the allegations contained in paragraph 31 of the Complaint.

32. The thirty-second paragraph of the Complaint sets forth legal conclusions that Defendants are not obligated to answer.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. As to paragraph 38 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 37 of the Complaint as if fully set forth herein.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. The fortieth paragraph of the Complaint sets forth legal conclusions that Defendants are not obligated to answer.

41. Defendants deny the allegations contained in paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. As to paragraph 44 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 43 of the Complaint as if fully set forth herein.

45. Defendants deny the allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. As to paragraph 47 of the Complaint, Defendants repeat and reallege their answers to each and every allegation contained in paragraphs 1 to 46 of the Complaint as if fully set forth herein.

48. The forty-eighth paragraph of the Complaint sets forth legal conclusions that Defendants are not obligated to answer.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Complaint.

51. The fifty-first paragraph of the Complaint sets forth legal conclusions that Defendants are not obligated to answer.

52. Defendants admit the allegations set forth in paragraph 52 of the Complaint except refer to the contents of the grievances referenced in paragraph 52 as to the contents of such purported grievances.

53. Defendants admit the allegations set forth in paragraph 53 of the Complaint except refer to the contents of the grievances referenced in paragraph 53 as to the contents of such purported grievances.

54. Defendants deny the allegations contained in paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

57. The Complaint fails to state any claims by Plaintiff against Defendants upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

58. The employment decisions of which Plaintiff, Carlos Alberto Ferrer, complains were based on reasonable factors other than the race and/or gender of Plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

59. Joseph T. Scott is not an employer pursuant to the New York State Human Rights Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

60. Plaintiff has failed to exercise reasonable diligence in seeking comparable employment and is thus barred from collecting back pay or benefits.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

61. Plaintiff failed to make any complaints about the alleged discrimination to any person employed by Defendants, and Defendants have taken reasonable measures to prevent such discrimination.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

62. Plaintiff is not entitled to liquidated damages for his state and federal wage and hour claims because Defendants acted in good faith and had reason to believe its actions and/or omissions did not willfully violate federal and/or state law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

63. Plaintiff's claims are barred because Plaintiff failed to arbitrate his claims.

WHEREFORE, Defendants demand judgment dismissing the Complaint in its entirety.

Dated: Garden City, New York
March 7, 2008

Respectfully submitted,

By: /s
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